

EXHIBIT C

TO

**DECLARATION OF SEAN F. CONNOLLY IN SUPPORT OF DEFENDANT
CITY AND COUNTY OF SAN FRANCISCO, CHIEF OF POLICE HEATHER
FONG, OFFICER SERNA AND OFFICER ARTIGA'S NOTICE AND MOTION
FOR SUMMARY JUDGMENT AND/OR PARTIAL SUMMARY JUDGMENT**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---oOo---

ESTHER HWANG,

Plaintiff,

vs.

Case No. C07-02718 MMC

CITY AND COUNTY OF SAN FRANCISCO,
ET AL.,

Defendants.

**CERTIFIED
COPY**

Deposition of

NATHAN FLORES

Monday, April 28, 2008

REPORTED BY: LESLIE CASTRO, CSR #8876

BONNIE L. WAGNER & ASSOCIATES
Court Reporting Services
41 Sutter Street, Suite 1605
San Francisco, California 94104
(415) 982-4849

1 Q. And how many -- is that the only bottle that
2 was ordered or was there more than one bottle?

3 A. More than one.

4 Q. How many bottles were ordered?

5 A. Two.

6 Q. Did the brother -- I think you said Daniel --

7 A. Yes.

8 Q. -- is he the one who ordered both of them?

9 A. Yes.

10 Q. Were they ordered at the same time or
11 sequentially?

12 A. Sequentially.

13 Q. And do you recall when the first bottle was
14 served?

15 A. When we first sat down.

16 Q. And was that served before the food got there?

17 A. Yes.

18 Q. And do you recall when the second bottle was
19 brought to the table?

20 A. It was when the first one was almost empty.

21 Q. Are you certain there were no more than two
22 bottles brought to the table or is there possible more
23 bottles of wine were brought to the table?

24 A. I am certain it was two.

25 Q. Was there any other form of alcoholic beverage

1 served at the table while you were there?

2 A. No.

3 Q. In other words, did anyone order a hard

4 alcohol drink or mixed drink like a martini or

5 bourbon --

6 A. No.

7 Q. -- at any point?

8 A. No.

9 Q. Was there any beer that was ordered?

10 A. No.

11 Q. After dinner, were there any aperitifs

12 ordered, any after dinner drinks of any kind?

13 A. No.

14 Q. Are you sure?

15 A. Positive.

16 Q. Did you have any wine yourself?

17 A. Yes.

18 Q. How many glasses did you have?

19 A. One.

20 Q. Do you recall Esther drinking any wine that

21 night?

22 A. Yes.

23 Q. And how many glasses did she drink?

24 A. Three.

25 Q. And you have a pretty good recollection of her

1 drinking three glasses of wine?

2 A. Yes. Because we had a little disagreement
3 over that.

4 Q. When did you have your disagreement?

5 A. When she was trying to continue drinking. I
6 tried to tell her to stop.

7 Q. At the restaurant?

8 A. Yes.

9 Q. And why did you tell her to stop?

10 A. Because it doesn't -- drinking that much wine
11 doesn't go well with her medication.

12 Q. And how do you know that?

13 A. Because I was the one that helped her get help
14 from a psychologist and I read some information about
15 her medication. And I had done some research on it.

16 And also she had told me that her psychologist
17 told her she should really cut down on the drinking and
18 if she ever does, to drink in moderation.

19 Q. So I want to back up on those two points for a
20 second.

21 So it's your testimony that at some point
22 prior to this dinner, and I assume, you correct me if
23 I'm wrong, while you were living with her, she told you
24 that her psychologist had told her not to drink and take
25 the medication she was taking?

1 A. Well, it wasn't only that. It was also the
2 fact that I know when she drinks a lot, she, you know,
3 she's intoxicated and she tends to lose control.

4 Q. And is it fair to say you started seeing signs
5 that she was getting intoxicated?

6 A. Starting to. But I know she -- she wasn't at
7 any point intoxicated.

8 Q. But she was getting to that point where -- of
9 intoxication where you at least told her to stop
10 drinking?

11 A. Well, I didn't want to -- I didn't want her to
12 get intoxicated. After her second glass, I said, "I
13 think that's enough."

14 Q. But your testimony is she had three glasses?

15 A. Yes.

16 Q. Is it possible she had more?

17 A. I guess, it's possible.

18 Q. But your specific recollection is at a minimum
19 three glasses and although you can't recollect her
20 having four, it's possible?

21 A. No. I highly doubt she had four because I was
22 sitting at the table with her the whole time she was
23 drinking.

24 Q. And were these in the regular size wine
25 glasses that they have at The House of Prime Rib?

1 A. The first two were, the third was not.

2 Q. What was the third?

3 A. The third was almost to the top of the glass.

4 Q. But the size of the glass was the regular wine

5 glass?

6 A. Correct.

7 Q. Who poured the third glass?

8 A. I did.

9 Q. Why did you pour it to the top?

10 A. I didn't. I only poured about two ounces in

11 there. I said that's -- that's -- "If you're going to

12 have the last glass, that's about all you should be

13 drinking." She grabbed the bottle and poured the whole

14 thing.

15 Q. She topped it off?

16 A. Yes.

17 Q. And you saw her drink that last glass?

18 A. Yes. But she didn't finish it.

19 Q. How much did she finish?

20 A. About three-quarters of it.

21 Q. Most of it?

22 A. Yes.

23 Q. How soon after she finished the last glass did

24 you leave?

25 A. Maybe 45 minutes.

1 Q. Did you order desert? When I say "you," did
2 the table order desert?

3 A. No.

4 Q. Did you order desert?

5 A. No.

6 Q. Did Esther order desert?

7 A. No.

8 Q. Have you ever tended bar?

9 A. Yes.

10 Q. Is that in part why you can estimate how many
11 ounces you poured into the glass?

12 A. Yes.

13 Q. How many ounces would have been in the glass
14 were it full, like when it was when Esther poured to top
15 it off? I'm just curious.

16 A. About eight ounces. About twice as much as
17 you would put in a regular wine glass.

18 Q. What's a regular wine glass? How many ounces
19 of wine go into a regular wine glass per serving? In
20 other words, not how much does the glass hold, but
21 what's a regular serving of wine?

22 A. Four ounces.

23 Q. So the previous two glasses had approximately
24 four ounces of wine in it?

25 A. Yes.

1 Q. The third glass, you poured about two ounces.

2 She topped it off to roughly eight ounces?

3 A. Yes.

4 Q. And these are all approximations of course.

5 A. Yes.

6 Q. And your testimony is she drank about

7 three-quarters of that?

8 A. Yes.

9 Q. I asked you how soon after the last glass of

10 wine that Esther had did you leave. And I wasn't

11 specific enough.

12 How soon after she stopped drink or finished

13 her wine did you leave?

14 A. Probably about 45 minutes to an hour.

15 Q. And no one ordered desert?

16 A. No. What took so long was because we brought

17 some of the gifts -- because the occasion, why we went

18 there, was to celebrate Mothers' Day one day early for

19 her mom. And also it was her sister-in-law's birthday.

20 So they we were opening presents. We were taking

21 pictures we were talking.

22 Q. Who was taking the pictures?

23 A. We all took turns.

24 Q. Who had the camera?

25 A. It was my camera.

1 there.

2 Q. Okay. Go ahead.

3 A. We walked in, ordered a drink. I remember
4 ordering a beer, a pint size. And she ordered a pear
5 cider which is an alcoholic fruit drink.

6 Q. Is it served in a pint glass?

7 A. Yes.

8 Q. Was that one served in a pint glass?

9 A. Yes.

10 Q. And then what did you do?

11 A. Then we just danced a little bit, drank,
12 talked.

13 Q. Who ordered the drinks, the beer and the
14 cider?

15 A. I did.

16 Q. Who paid for it?

17 A. I did.

18 Q. And how did you pay for it?

19 A. With -- so she gave the cash from the ATM.
20 She just said, "Hold on to this for me because I don't
21 have any pockets or purse." So her cash was mixed with
22 mine. So it might have been hers, it might have been
23 mine.

24 Q. You paid with cash?

25 A. Yes.

1 Q. Did you -- what were you wearing when you went
2 in?

3 A. I was wearing a collared shirt similar to what
4 I'm wearing now and a pair of jeans.

5 Q. Did you have a coat or a sweater?

6 A. I did.

7 Q. What type of coat? Was it a coat or a
8 sweater?

9 A. Yes, it was a coat.

10 Q. What type generally?

11 A. I think it was a black -- like a casual sport
12 coat.

13 Q. Did you -- what did you do with it? Did you
14 keep it with you or did you give it to anyone?

15 A. I put it in the coat check along with
16 Esther's.

17 Q. Did Esther have a coat?

18 A. Yes.

19 Q. Was it a fur coat?

20 A. Yes.

21 Q. And was it checked into the same coat check?

22 A. Correct.

23 Q. Presumably you did this as you were coming in?

24 A. Yes.

25 Q. I don't want to presume anything.

1 A. Well, we walked in. I think we walked in, put
2 our jackets in the coat check and then order the drinks.

3 Q. How long were you there at Dolche before you
4 left?

5 A. Maybe an hour, hour and a half.

6 Q. I think I already asked you that.

7 A. Yeah, you asked me that.

8 Q. In that period of time, did you order anything
9 else to drink besides the beer and the cider?

10 A. Second round of both.

11 Q. Do you recall what kind of beer you had?

12 A. No.

13 Q. So you ordered one round.

14 You finished the first round?

15 A. Yes.

16 Q. Did Esther finish her drink as well?

17 A. Yes.

18 Q. Somebody went to order a second round?

19 A. I did.

20 Q. Was that you?

21 A. Yes.

22 Q. Did you order another beer?

23 A. Yes.

24 Q. Same beer?

25 A. Yes.

1 Q. Did you also order Ms. Hwang a pear cider
2 again?

3 A. Yes.

4 Q. Same drink?

5 A. Correct.

6 Q. Served in the same pint container?

7 A. Yes.

8 Q. Did she drink it?

9 A. Yes.

10 Q. Did you drink yours?

11 A. I didn't finish my beer.

12 Q. And how much of your beer did you finish?

13 A. Approximately half of it.

14 Q. Did she finish her pear cider?

15 A. Yes.

16 Q. All of it?

17 A. Yes.

18 Q. Did you or her order any more alcohol while
19 you were there inside Dolche?

20 A. No.

21 Q. The sum total of drinks that you drank inside
22 Dolche were two a piece.

23 But you less than two at dinner, but Esther
24 two?

25 A. Correct.

1 A. I felt like going home, yeah, at that point.

2 Q. Did you tell her that?

3 A. No.

4 Q. Did you ever tell Esther at any point that you

5 wanted to go home?

6 A. Yes.

7 Q. When?

8 A. After we left the first club.

9 Q. Dolche?

10 A. Yes.

11 She wanted to get some cigarettes. And I told
12 her, you know, "I don't think that's a good idea." And
13 we, kind of, got into a disagreement and I noticed she
14 was intoxicated at that point. So I said, "I think it's
15 time to go home."

16 Q. Let me back up. Because I asked you a
17 question that caused you to jump ahead a little bit.

18 A. Yes.

19 Q. At some point you decide to leave Dolche?

20 A. Yes.

21 Q. You and Ms. Hwang decide to leave Dolche.

22 Describe step by step what happened at that
23 point.

24 A. After we left, we walked out, we walked down
25 the street. I guess, that would be westbound on

1 videotape. It's 12:15.

2 Do you want to take a break lunch break now or do

3 you want to keep going longer?

4 Let's break and we'll discuss this off the record.

5 THE VIDEOGRAPHER: This concludes disk No. 1 and

6 we're off the record at 12:10.

7 (Brief break.)

8 THE VIDEOGRAPHER: This is the start of disk No. 2

9 in the deposition of Mr. Nathan Flores. And we're back

10 on the record at 12:22.

11 MR. CONNOLLY: Back on the record.

12 Q. Mr. Flores, I asked you about this. I want to

13 ask you a few more follow-up questions.

14 You said you tended bar in the past?

15 A. Correct.

16 Q. When and how long were you a bartender?

17 A. Back when I was in college, I worked at a

18 Chili's as a bartender for about six months. And then I

19 worked at Dave and Busters.

20 Q. What's that called?

21 A. Dave and Busters.

22 Q. Dave and Busters?

23 A. Yeah. It's, kind of, an adult Chucky Cheese.

24 Q. Sounds interesting.

25 A. It's huge. It's got, like, three bars, five

1 and I told her "No." And we had a slight disagreement.

2 Q. Would you call it an argument?

3 A. No.

4 Q. Disagreement.

5 Now, I think you said -- I think you said she
6 was intoxicated at that point?

7 A. I felt she was at that point, yes.

8 Q. Leaving Dolche?

9 A. Yes.

10 Q. Why do you say that, what's your basis for
11 saying that?

12 A. Well, she was red, she was agitated, she was
13 talking loudly. And before we got to the liquor store,
14 she wanted to cross the street. And I said, "It's, kind
15 of, a dumb idea to be jaywalking right in front of five
16 police officers."

17 Q. And in your time as a bartender, you had seen
18 people intoxicated?

19 A. Yes.

20 Q. And, in fact, maybe in your life experiences,
21 you've seen people intoxicated?

22 A. Yes.

23 Q. When you say she was red, what does that mean,
24 what's the significance of her being red to you?

25 A. Well, I'm not sure if you're familiar with

1 STATE OF CALIFORNIA)

2) Ss.

3 COUNTY OF CONTRA COSTA)

4

5 I hereby certify that the witness in the
6 foregoing deposition, named NATHAN FLORES, was by me
7 duly sworn to testify the truth, the whole truth, and
8 nothing but the truth in the within-entitled cause; that
9 said deposition was taken at the time and place therein
10 stated; that the testimony of said witness was reported
11 by me,

12 LESLIE CASTRO,

13 A Certified Shorthand Reporter and disinterested person,
14 and was thereafter transcribed into typewriting; and
15 that the pertinent provisions of the applicable code or
16 rules of civil procedure relating to the notification of
17 the witness and counsel for the parties hereto of the
18 availability of the original transcript of deposition
19 for reading, correcting and signing have been complied
20 with.

21 And I further certify that I am not of
22 counsel or attorney for either or any of the parties to
23 said deposition, nor in any way interested in the
24 outcome of the cause named in said caption.

25 IN WITNESS WHEREOF, I have hereunto set

1 my hand and affixed my seal of office the 15th day of
2 May, 2008.

3
4 

5
6 LESLIE CASTRO
7 C.S.R. No. 8876
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25